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Error to Circuit Court, Botetourt County.

Action by one Kidd against the Chesapeake & Ohio Railway Company. From a judgment for plaintiff, defendant brings error. Reversed.

J. M. Perry, of Staunton, for plaintiff in error.

C. M. Lunsford, of Fincastle, for defendant in error.

BROWN v. CAROLINA, C. & O. RY. CO.

Sept. 7, 1914.

[83 S. E. 981.]

1. Motions (§ 59*)—Final Order—Setting Aside.—Where a final order of dismissal is made in vacation, the court at a subsequent term has no authority to reopen the case and set aside the order.

[Ed. Note.—For other cases, see *Motions*, Cent. Dig. §§ 73-81; Dec. Dig. § 59.* 4 Va.-W. Va. Enc. Dig. 708.]

2. Appeal and Error (§§ 66, 344*)—Writ of Error—Time—Final Order.—On August 21, 1912, the court made a vacation order quashing the service of a summons because not signed or attested by the clerk, as required by Const. 1902, § 106 (Code 1904, p. ccxxxvi), and on September 26th overruled a motion to set aside the former order of dismissal. More than a year after the entry of the vacation order, plaintiff sued out a writ of error. Held, that if the vacation order was final, the writ of error was too late, and, if not final, then neither was the order denying the motion to set it aside, and was therefore insufficient to sustain the writ of error.

[Ed. Note.—For other cases, see *Appeal and Error*, Cent. Dig. §§ 329-331, 335-343, 1889-1893, 1896; Dec. Dig. §§ 66, 344.* 4 Va.-W. Va. Enc. Dig. 438, 497.

Error to Circuit Court, Scott County.

Action by one Brown against the Carolina, Clinchfield & Ohio Railway Company. A judgment was rendered dismissing the suit, and plaintiff brings error. On motion to dismiss. Granted.

Former opinion (82 S. E. 733) withdrawn.

John Kee and *Russell S. Ritz*, both of Bluefield, W. Va., for plaintiff in error.

S. H. Bond, of Gate City, and *Walter H. Robertson*, of Johnson City, Tenn., for defendant in error.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.